HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.16010 of 2007

Between:

Smt.N.Krishna Veni

... Petitioner

AND

The Deputy transport Commissioner &
Secretary, Regional Transport Authority,
Kadapa.

... Respondent

; O R D E R :

Counsel for the petitioner : Shri D.Khasim Sahab for
Shri S.A.K.Mynuddin.
Counsel for the respondent : Government Pleader for
Transport.

Dated: 30th July, 2007

Per C.V.NAGARJUNA REDDY, J.

This is a petition for quashing demand notice bearing R.No.8115/A2/2006 dated 28.12.2006 and memo dated 11.4.2007 issued by the Deputy Transport Commissioner and Secretary, Regional Transport Authority, Kadapa requiring the petitioner to pay Rs.1,53,080/- towards difference of tax in respect of his vehicle bearing registration No.TN23/C-2727.

The facts of the case are briefly summarized hereunder:

The petitioner was granted town service permit on the Rayachoti to Yerraingivandlapalle via Netaji Club, Thana, L.R.Palle Cross, Bandlapalle, Vasanthavandlapalle and Chikkalavandlapalle route. She was plying bus bearing registration No.TN-23/C-2727 on that route. The term of the permit expired on 4.10.2006. On the very next day i.e. 5.10.2006, the petitioner made an application for renewal of her permit with a request to condone the delay in applying for renewal of permit. The application for renewal was rejected by the respondent on 11.12.2006. The petitioner challenged the same by filing an appeal before the Andhra Pradesh State Transport Appellate Tribunal (for short 'STAT'), which was registered as Appeal No.168 of 2006.

On 7.12.2006, the petitioner's vehicle was checked by Motor Vehicles Inspector, Rayachoti and was seized. The petitioner was served with a check report bearing No.2114990, dated 7.12.2006 wherein it was mentioned inter alia that the vehicle was stopped and checked while proceeding to Y.Kotapally from Rayachoti and that no proof of valid permit to ply the vehicle on the route Rayachoti – Yerragundlapalle as stage carriage was produced and that 20 passengers were found travelling in the bus at the time of the check.

The check report also mentioned the respective destinations of the passengers and the fares collected from them. This was followed by show cause notice dated 12.12.2006, whereby the petitioner was called upon to show cause as to why she may not be required to pay tax @ Rs.3,675/- per seat per quarter for 46 passengers. The total amount specified in the notice was Rs.1,69,050/- and after making a deduction of Rs.15,970/- towards the tax already paid for the quarter ending 31.12.2006, the petitioner's liability towards the difference of tax was shown as Rs.1,53,080/-. The petitioner filed reply dated 16.12.2006, wherein it was stated that the vehicle was not being used for carrying the passengers and it was illegally seized by the Motor Vehicle Inspector from the workshop where it has been taken for repairs. A day after the petitioner sent her representation, she sent another representation on 17.12.2006 wherein she reiterated her earlier stand and stated that the persons found in the vehicle were the mechanics and that the vehicle was not in transit and was in the process of undergoing repairs such as welding, spring plate setting etc.

The respondent vide his memo R.No.8115/A2/2006, dated 28.12.2006 rejected the explanation offered by the petitioner and confirmed the demand proposed in the show cause notice dated 12.12.2006.

Sri D.Khasim Sahab, learned counsel for the petitioner argued that the show-cause notice and the demand notice are based on the contents of the check report of the Motor Vehicle Inspector, which are false and, therefore, the petitioner cannot be burdened with the liability of penal tax. He submitted that the petitioner did not ply her vehicle when it was checked and that the Motor Vehicle Inspector had erroneously treated the mechanics, who were carrying out repairs as

passengers. Learned counsel submitted that the levy and collection of difference of tax on the premise that the vehicle was plied without permit is wholly illegal and unsustainable.

We have carefully considered the submissions of the learned counsel, but have not felt persuaded to accept the same. Admittedly, the stage carriage (town service) permit of the petitioner expired on 4.10.2006 and the vehicle was checked on 7.12.2006 by Motor Vehicles Inspector, Rayachoti. The check report prepared by the officer shows that the vehicle was carrying 10 passengers bound to Bandlapalli, 5 passengers bound to Chikkalavandlapalli, and another set of 5 passengers were travelling to Suddavaripalli. The fares collected from these passengers are also mentioned in the check report. Therefore, the petitioner's plea that the check report was false and the same could not be made basis for creating liability against her cannot be accepted. The petitioner's plea that the persons found in the vehicle were not the passengers, but they were the mechanics appears to us to be wholly improbable. It is not possible to believe that as many as 20 persons were required to attend the repair of a bus. In any case, the question cannot be decided by this Court under Article 226 of the Constitution of India

On the premise aforesaid, the writ petition fails and is accordingly dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No.20334 of 2007 filed by the petitioner for interim relief is also dismissed.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

30 -07 -2007.

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